Local Union No. 1447, Sign-Pictorial & Displaymen, a/w International Brotherhood of Painters and Allied Trades of the United States and Canada, AFL–CIO–CLC *and* Hargrove, Inc. and Carpenters District Council of South Jersey and its Local 623, a/w United Brotherhood of Carpenters and Joiners of America, AFL–CIO. Case 4–CD–801

January 21, 1992

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

The charge in this Section 10(k) proceeding was filed on February 28, 1991, by Hargrove, Inc. (the Employer) alleging that the Respondent, Local Union No. 1447, Sign-Pictorial and Displaymen, a/w International Brotherhood of Painters and Allied Workers of the United States and Canada, AFL–CIO–CLC (Decorators), violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing the Employer to assign certain work to employees it represents rather than to employees represented by Carpenters District Council of South Jersey and its Local 623, a/w United Brotherhood of Carpenters and Joiners of America, AFL–CIO (Carpenters). The hearing was held on April 29 and May 17, 1991, before Hearing Officer Kathleen O'Neill.[1]

The National Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record,[2] the Board makes the following findings.

I. JURISDICTION

The Employer, a Maryland corporation, creates and produces trade shows and special events at hotels and convention centers in various cities around the country from its facility in Lanham, Maryland. It annually purchases and receives goods and materials in New Jersey valued in excess of $50,000 from points outside the State of New Jersey. The parties stipulate, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Decorators and the Carpenters are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. *Background and Facts of Dispute*

The Employer has staged special events and trade shows in Washington, D.C.; Baltimore, Maryland; Houston and Austin, Texas; New Orleans, Louisiana; Boston, Massachusetts; and Atlanta, Georgia. Special events are functions such as weddings, New Year's Eve parties, bar and bat mitzvahs, and theme parties. Trade shows are substantially larger than special events in the number of attendees and participants. The Employer had produced special events in Atlantic City, but never produced a trade show there until the American Society of Association Executives (ASAE) meeting in March 1991.

In producing an event the Employer may lay out the floor, install and dismantle drapery and swagging, assemble and disassemble the pipes and drape outlining the show floor or designating display booth areas, skirt and decorate tables, install and dismantle display booths, and set up and remove plants, props, signs, flags, and banners. Wherever it performs its functions, it takes with it a crew of employees represented by a Carpenters local out of Washington, D.C. These employees do draping, swagging, and decorating work that often requires riding lifts to do ceiling work. They also install and dismantle prefabricated display booths. The Employer uses local help obtained at the site of the event, generally for 2 days at a time, to augment its permanent employees.

Although the Employer had intermittently worked in Atlantic City during the 1950s, 1960s, and 1970s, it never signed a contract with the Decorators until November 20, 1987. The contract expired on April 1, 1989. It did not differentiate between special events and trade shows, but it was signed in anticipation of a number of special events the Employer was doing in Atlantic City over the holidays in 1987. For these special events, the Employer used employees represented by the Decorators who worked alongside its permanent Carpenters-represented employees.

After the contract with the Decorators expired in April 1989, the Employer sought to negotiate a contract with the Decorators to cover special events in Atlantic City. The Decorators refused to grant the concessions the Employer wanted, in part, because the Decorators had ''most favored nation'' clauses in its contracts with all the other show producers in Atlantic City and would, therefore, have to grant the same concessions to all these other employers. The Employer told the Decorators that if it would not agree to the Employer's terms, it would sign a contract with the Carpenters. On December 28, 1990, the Employer signed a contract with Carpenters Local 623.

[1] The Carpenters moves to reopen the record to include the Board's decision in *Carpenters Local 623 (Atlantic Exhibit Services)*, 274 NLRB 71 (1985). The Decorators moves to reopen the record to include the Board's decision in *Painters Local 1447 (United Exposition Service)*, 303 NLRB 732 (1991), and the Employer opposes. We take administrative notice of these decisions and therefore find it unnecessary to pass on the motions.

[2] The Employer's unopposed motion to correct the transcript is granted.

In January 1991, Decorators Business Manager Raymond Nelson learned that the ASAE trade show was going to be done by the Employer at the Trump Taj Mahal Hotel and Casino in Atlantic City. He also learned that the Employer planned to assign local employees represented by the Carpenters to do the pipe and drape and table skirting work. Nelson met with William Blaziek, executive director of sales for the Taj Mahal. Nelson told him that the Employer was giving the ''traditional work'' of employees represented by the Decorators to employees represented by the Carpenters. Nelson told Blaziek that the Decorators would have no recourse but to engage in informational picketing of the convention.

In a letter of February 26, 1991, Nelson informed the Employer's senior vice president, Chris Hargrove, that Decorators Local 1447 was going to picket the Employer at the ASAE trade show, starting March 1, 1991. Thereafter, the Employer filed the instant charges.

For the ASAE trade show, the Employer used 50 carpenters, including its permanent employees and employees represented by Local 623. They performed all the pipe and drape work, skirting of tables, draping banners, cleaning of furniture, setting up and dismantling of exhibits. The pipe and drape and table skirting work constituted 20 percent of the job.

B. *Work in Dispute*

The disputed work involves the installation of pipes and drapes, including the skirting of tables, at the 1991 American Society of Association Executives trade show in Atlantic City, New Jersey.

C. *Contentions of the Parties*

The Employer draws a distinction between special events and convention work, claiming that they are two different industries. The Employer contends that, while some of the work involved in each is similar, there are significant differences, such as crew size and the amount of ceiling work. The Employer contends that the work in dispute should be assigned to employees represented by the Carpenters because it has a current collective-bargaining agreement covering the work with the Carpenters and it has no current collective-bargaining agreement with the Decorators. The Employer also contends that the skills of the employees represented by the Carpenters are superior, that they are more versatile and therefore have less down time, and that the Carpenters is able to provide greater numbers of qualified workers.

The Decorators contends that the disputed work is its traditional work in Atlantic City. The Decorators contends that it made no threat in violation of Section 8(b)(4)(D) and was involved only in preservation of its traditional work. Therefore, the Decorators contends that no jurisdictional dispute exists.

The Carpenters contends that there is a jurisdictional dispute and that the disputed work should be assigned to employees it represents based on its collective-bargaining agreement with the Employer, relative skills, economy and efficiency of operation, and employer and industry practice.

D. *Applicability of the Statute*

Before the Board may proceed with a determination of a dispute pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that the parties have not agreed upon a method for the voluntary adjustment of the dispute.

Contrary to the Decorators, we find that there are competing claims for the work and that a jurisdictional dispute exists.[3] As noted above, the Decorators threatened the Employer and the Taj Mahal Hotel with picketing in order to force the Employer to assign the disputed work to employees it represents.

We find reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred and that there exists no agreed method for voluntary adjustment of the dispute within the meaning of Section 10(k) of the Act. Accordingly, we find that the dispute is properly before the Board for determination.

E. *Merits of the Dispute*

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402 (1962).

The following factors are relevant in making the determination of the dispute.

1. Certification and collective-bargaining agreements

There is no evidence that the Board has certified either the Decorators or the Carpenters as the collective-bargaining representative of the Employer's employees in Atlantic City.

[3] We reject the Decorators' claim that it is merely trying to preserve work that it has traditionally done for the Employer. It is undisputed that the ASAE trade show was the first trade show ever done by the Employer in Atlantic City. Thus, Decorators-represented employees have never performed for the Employer the same type of trade show work that is in dispute. Accordingly, we do not address the relevance of that claim to the existence of a jurisdictional dispute.

The Employer's collective-bargaining contract with Carpenters Local 623 was signed on December 28, 1990, and expires on April 30, 1993. It explicitly covers the disputed work.

The Decorators has no current collective-bargaining contract with the Employer. The Decorators' only contract with the Employer expired on April 1, 1989.

Because the Carpenters has a current collective-bargaining agreement with the Employer covering the disputed work and the Decorators has no current contract, we find that this factor favors an award of the disputed work to employees represented by the Carpenters.

2. Employer preference

The Employer prefers to assign the disputed work to employees represented by the Carpenters rather than to employees represented by the Decorators. Accordingly, we find this factor favors an award of the disputed work to employees represented by the Carpenters.

3. Employer past practice

The Employer uses employees represented by the Carpenters for both special events and trade shows in all the other cities in which it performs work, including Houston and Austin, Texas; Washington, D.C.; Baltimore, Maryland; New Orleans, Louisiana; Atlanta, Georgia; and Boston, Massachusetts. The Employer has used employees represented by both Unions in its special events work in Atlantic City. It has never before done trade show work in Atlantic City. We find this factor does not favor an award of the disputed work to either group of employees.

4. Area and industry practice

The practice varies greatly across the country, and is a matter of local custom. In Atlantic City, employees represented by the Decorators perform the type of work that is in dispute for trade shows, while in other cities one or more of several other unions may perform this work. We find the factor of area practice favors an award of the disputed work to employees represented by the Decorators. We find the factor of industry practice is inconclusive and does not favor an award to either group of employees.

5. Relative skills

The record reveals that both groups of employees have the requisite skills to perform the disputed work. Accordingly, we find that this factor does not favor an award of the disputed work to either group of employees.

6. Economy and efficiency of operations

The evidence shows that employees represented by the Carpenters can perform all the jobs needed to produce a trade show. They generally have more tools, including power tools, than the employees represented by the Decorators. For ceiling work, riding lifts must be used. Employees represented by the Decorators have declined to ride the lifts. Employees represented by the Carpenters are more versatile and can do other jobs when the show floor is blocked, because of unloading procedures for instance, and it is impossible to do pipe and drape work. Since the disputed work represents only 20 percent of the total job, there is less down time with employees represented by the Carpenters because of their versatility.

Accordingly, we find this factor favors an award of the disputed work to employees represented by the Carpenters.

Conclusions

After considering all the relevant factors, we conclude that employees represented by the Carpenters are entitled to perform the work in the dispute. We reach this conclusion relying on the factors of collective-bargaining agreements, employer preference, and economy and efficiency of operations, which we find outweigh the factor of area practice that favors the Decorators.

In making this determination, we are awarding the work to employees represented by the Carpenters, not to that Union or its members. The determination is limited to the controversy that gave rise to this proceeding.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

1. Employees represented by Carpenters District Council of South Jersey and its Local 623, a/w United Brotherhood of Carpenters and Joiners of America, AFL–CIO are entitled to perform the installation of pipes and drapes work, including the skirting of tables, at the 1991 American Society of Association Executives 1991 trade show in Atlantic City, New Jersey.

2. Local Union No. 1447, Sign-Pictorial & Displaymen, a/w International Brotherhood of Painters and Allied Trades of the United States and Canada, AFL–CIO–CLC, is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force Hargrove, Inc. to assign the disputed work to employees represented by it.

3. Within 10 days from this date, Local Union No. 1447, Sign-Pictorial & Displaymen, a/w International Brotherhood of Painters and Allied Trades of the United States and Canada, AFL–CIO–CLC, shall notify the Regional Director for Region 4 whether it will refrain from forcing the Employer, by means proscribed by Section 8(b)(4)(D), to assign the disputed work in a manner inconsistent with this determination.